IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND GREENBELT DIVISION

COSTAR REALTY INFORMATION and COSTAR GROUP, INC.,

Plaintiffs,

ν.

MARK FIELD D/B/A ALLIANCE VALUATION GROUP, et al.

Defendants.

Civil Action No. 8:08-CV-663-AW

DECLARATION OF STEVEN J. WILLIAMS

DECLARATION OF STEVEN J. WILLIAMS

- I, Steven J. Williams, declare as follows:
- 1. My name is Steven J. Williams. I am employed by CoStar Group, Inc. ("CoStar") as the Assistant Director of the Fraud, Theft & Litigation Team. The statements in this declaration are based upon personal knowledge and I would testify to such statements under oath if called upon as a witness.
- I have been employed by CoStar for nearly 10 years, having first been hired in January of 2000. During my time at CoStar, I have worked as a researcher and in CoStar's customer support department. As a result, I am extremely familiar with CoStar' products, research practices, internal recordkeeping and business practices. Since September of 2003, I have worked in CoStar's legal department in various capacities related to the investigation of unauthorized use of CoStar's services. As a result of my experience, I have become very familiar with CoStar's policies, practices, and procedures for both licensing its online products.

providing service to its clients, investigating theft of its products, as well as the technological tools it uses to do those things.

- 3. CoStar is the leading provider of commercial real estate information in the United States and the United Kingdom, with approximately 900 researchers collecting and maintaining data on over 3,000,000 properties and over 1,000,000 active commercial listings.
- 4. Of CoStar's 900 researchers, approximately 100 are "field researchers" who are located on the ground in local commercial real estate markets canvassing for new commercial real estate availabilities, construction, and the like. These field researchers are employees of CoStar managed remotely by a field research team in our headquarters in Bethesda, Maryland. As a part of their responsibilities, CoStar's field researchers take photographs of the commercial real estate buildings they canvass for inclusion with CoStar's database of commercial real estate information. CoStar's field researchers are trained in photography and have taken millions of professional-quality photographs of commercial real estate and buildings.
- As a part of my responsibilities in CoStar's legal department, I am responsible for registering the copyrights in the photographs taken by CoStar's researchers. CoStar makes it a part of its regular business practice to register its copyrights in the photographs taken by its researchers on a quarterly basis to ensure that those photographs have been registered within 90 days of their first publication in our database. CoStar registers its photographs collectively on a photographer by photographer basis pursuant to the Copyright Office's regulations allowing for group registrations of photographs. Pursuant to this process, CoStar has submitted applications for the registration of more than 2.5 million photographs.
- 6. Included in CoStar's registrations are registrations VA 1-386-381 and VA 1-375-676. These registrations are for the photographs taken by Christiaan Cruz during the first three

months of 2006 (VA 1-386-381) and during the period April 14, 2005 through December 31, 2005 (VA 1-375-676). Exhibits 1 and 2 to CoStar's Opposition to Pathfinder's Motion for Summary Judgment include not only copies of those registrations, but the supporting applications and materials submitted to the Copyright Office.

- 7. CoStar makes its commercial real estate information and photographs available to those in the commercial real estate industry as a set of databases that are available on CoStar's website, www.costar.com. CoStar sells its products all across the United States in over 100 markets, large and small. CoStar's computers located in Maryland serve customers in all of these markets.
- 8. In order to gain access to those database products, CoStar's customers enter into a license agreement with CoStar (typically on an office-wide basis) and a pay a license fee, which is usually computed on the basis of the number of commercial real estate professionals in the customer's office. CoStar's license agreement allows its customers to, among other things, access the information in the databases to which they have subscribed and make limited use of the photographs and information contained in those databases.
- 9. CoStar's licensees use a user name and password to access CoStar's products, accessing those products from the home page of the CoStar website. The first time a user logs in to their CoStar account, they are presented with the entire text of CoStar's Terms of Use and are required to click a button saying "I Accept" before using CoStar's services. Users are presented with CoStar's Terms of Use each month they use the service, and cannot proceed unless they click the "I Accept" button.
- 10. In the same portion of the CoStar website where users input their user name and password, a line of text reads "Use/Login Subject to <u>Terms.</u>" The word "Terms" is underlined

because it contains a hyperlink to a webpage containing CoStar's Terms of Use. I have attached a printout of CoStar's home page with the login area circled and a copy of CoStar's Terms of Use as Exhibit A to this declaration.

- 11. As a part of CoStar's normal business practices and in the ordinary course of its operations, it maintains records of contemporaneous communications it has had with its customer and prospective customers. Those records are maintained in a proprietary internal contact management system created by CoStar. Unfortunately, the records in this system are only easily viewable on CoStar's system, but I am able to make copies of those records and paste them into more easily readable and exchangeable documents such at text files, Microsoft Excel files, and Microsoft Word files.
- One of CoStar's records indicate that two of CoStar's sales representatives conducted a demonstration of CoStar's products for Brad Christensen and others at Pathfinder Mortgage Corporation ("Pathfinder") as early as January 9, 2006 after Pathfinder expressed interest in CoStar's products. CoStar then followed up by providing Mr. Christensen a proposal for Pathfinder to license CoStar's products. Another record created on January 13, 2006, states that during a follow up call, Mr. Christensen indicated that Pathfinder was "price sensitive." Pathfinder did not take a license after these conversations. I have attached a true and accurate copy of the items in CoStar's records concerning these communications as Exhibit B to this declaration.
- 13. CoStar's business records indicate a number of attempts by CoStar to sell CoStar products to Pathfinder over the course of the next few years. I have attached a true and accurate copy of the items in CoStar's records concerning these communications as Exhibit C to this declaration.

- 14. CoStar's records also show that a user account was created for Brad Christensen in October 2002 under a license agreement between CoStar and Alliance Valuation Group ("Alliance"), and that Christensen was specifically included as a user on a list of users submitted by Alliance in December 2004. I have attached a true and accurate copy of the items in CoStar's records showing that a user account was set up for Brad Christensen in October 2002 and a true and accurate copy of the user list submitted by Alliance in December 2004 containing Christensen's name as Exhibit D to this declaration. Nowhere in the user list is anyone identified as an employee of Pathfinder, nor would CoStar permit two companies to share a single license agreement.
- 15. On December 12, 2005, a CoStar sales representative had a communication with Mark Field of Alliance in which Field indicated that Christensen was "no longer with Alliance Valuation." As such, CoStar terminated Christensen's user account as of that date. A true and accurate copy of the record of that communication is attached hereto as Exhibit E
- 16. CoStar keeps internal records of each log-in session made to its products. These records are kept in CoStar's ordinary course of business and reflect the data gathered from CoStar's website as well as the information available from a user's computer and the Internet related to a particular log-on session.
- 17. CoStar's internal records show that, beginning in February 2004, the Alliance account assigned to Christensen began to be accessed from two particular IP addresses: 64.60.14.210 and 64.60.231.251. His account was accessed from those IP addresses up through December 2005. I am attaching a true and correct copy of an Excel spreadsheet prepared from CoStar's records showing the log-ins under the Brad Christensen user name as Exhibit F to this declaration.

- 18. During the period February 2004 through December 18, 2005, only the Christensen account was accessed from the 64.60.14.210 and 64.60.231.251. No other Alliance account was accessed using those IP addresses during that period.
- 19. CoStar's internal records show that, beginning on December 19, 2005, just one week after CoStar terminated Brad Christensen's access through his own account assigned through Alliance, one or more persons using a user name and password assigned to Mark Field of Alliance logged on to CoStar's website on 58 occasions from two IP addresses previously associated with Christensen's account: 64.60.231.251 and 64.60.14.210. Prior to that date, no logins from the 64.60.231.251 or 64.60.14.210 IP addresses had occurred through the account assigned to Mark Field.
- 20. My colleague Curtis Ricketts has submitted a declaration establishing that those IP addresses were assigned to Pathfinder. I am attaching a true and correct copy of an Excel spreadsheet prepared from CoStar's records showing the log-ins under the Mark Field user name as Exhibit G to this declaration. The logins from Pathfinder's IP addresses are highlighted in yellow on this Exhibit.
- 21. CoStar's records also show that one or more persons using a user name and password assigned to Barbara Quannie of Alliance logged on to CoStar's website on two occasions from an IP address associated with Pathfinder (64.60.231.251). I am attaching a true and correct copy of an Excel spreadsheet prepared from CoStar's records showing the log-ins under the Barbara Quannie user name as Exhibit H to this declaration. The log-ins from Pathfinder's IP address are highlighted in yellow on this Exhibit.
- 22. As shown in Exhibit G, on July 10, 2006, at 3:24 p.m., someone using Mark Field's user name and password from Pathfinder's IP address attempted to access CoStar's

products at the same time that someone was using the Mark Field account from a different IP address. CoStar's computers note this attempted double log-in as a "violation." A similar violation occurred on March 7, 2007, where a person using a computer at Pathfinder's IP address was accessing the Mark Field account at the same time a person was accessing the same account from a different IP address, 70.169.228.131. At the time, 70.169.228.131 appeared to be the principle IP address Field used to access his CoStar account. Both of these instances show that two different people were attempting to log into the Field account at the same time from different computers on different computer networks.

- 23. As shown in Exhibit H, on May 8, 2006, a person logged into the Alliance account associated with Barbara Quannie from the principle IP address used by that account at 11:52 a.m. Just a minute later, a person logged into the Barbara Quannie account from one of Pathfinder's IP addresses. Again, this instance shows two different people logging into the Quannie account nearly at the same time from different computers on different computer networks.
- 24. I note that on Exhibit G, a number of additional log-ins to the Field account from the 64.60.14.210 and 64.60.231.251 IP addresses occurred within 45 minutes of log-ins from the IP addresses more typically associated with Field's account. According to the contract between CoStar and Alliance, Alliance's office was located at 2858 Via Bellota in San Clemente, California.
- 25. In early 2008, I had a phone conversation with Brad Christensen of Pathfinder. During that phone call, he denied that Pathfinder itself was using CoStar's database products and instead that any unlicensed usage could only have come from Pathfinder's Los Angeles offices. According to an Internet archive of Pathfinder's website created on January 5, 2008, attached

hereto as Exhibit I, Pathfinder's Los Angeles offices were located at 725 South Figueroa St., Suite 1535, Los Angeles, CA 90017.

- 26. Attached hereto as Exhibit J is a copy of a Google web page describing the driving directions and driving time between Pathfinder's Los Angeles office and Alliance's San Clemente office.
- 27. CoStar's computers maintain copies of the search reports saved by CoStar users on the CoStar website. These reports are available to me in my capacity as an investigator of unlicensed use of CoStar's database products. I am able to search CoStar's system for all reports saved by a user during a session associated with a particular IP address.
- 28. Attached hereto as Exhibit K are copies of reports saved by a person using the account assigned to Mark Field from the Pathfinder IP address 64.60.231.251 in January 2008. Including in these reports are photographs and property information associated with (1) 601-697 N. Euclid Street, Anaheim, CA 92801; (2) 8871-8947 Garden Grove Boulevard, Garden Grove, CA; and (3) 6847-6931 Katella Ave., Cypress, CA 90630.
- 29. Attached collectively as Exhibit L to this declaration are true and accurate copies of the CoStar photographs for the following properties: (1) 601-697 N. Euclid Street, Anaheim, CA 92801; (2) 8871-8947 Garden Grove Boulevard, Garden Grove, CA; (3) 6847-6931 Katella Ave., Cypress, CA 90630.
- 30. Had Pathfinder legitimately licensed the same product to which it had access during the period December 2005 through March 2008, Pathfinder would have had to pay CoStar license fees of \$12,170 per month, for total license fees of \$316,420. However, Pathfinder never entered into a license agreement with CoStar nor did CoStar ever specifically authorize Pathfinder to use CoStar's database products.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of October at Bethesda, Maryland.

Steven J. Williams

Exhibit A

COSTAR #1 Commercial Real Estate Information Company LoginUse	Sentence Password Login Logi	
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Winning deals in this market requires a special edge to find, market and analyze properties. CoStar is the winning edge in turbulent times.	☐ Office ☐ Multi-Family ☐ Industrial ☐ Land ☐ Retail ☐ Other	38 8/38/58/25/58/38
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Those portions of the Product that may be accessed by the general public and that do not require any use of F'asscodes (as defined below) are referred to as the "Non-Passcode Protected Product". Those portions of the Product that require use of Passcodes for access and are available only to individuals or entities ("CoStar Clients"), or those acting through them, who enter into a License Agreement (as defined below) with CoStar that authorizes access to such CoStar service are referred to as the "Passcode Protected Product".

The Passcode Protected Product includes, for example, the CoStar Property Professional®, CoStar COMPS Professional®, CoStar Exchange® and CoStar Tenant® services as well as the CoStar COMPS Express®, CoStar Property Express®, CoStar Listings Express®, and CoStar Commercial MLS®, and CoStar Showcase® services. A "License Agreement" is defined as either (i) a written hand-signed contract between a CoStar Client and CoStar that authorizes access to a CoStar service, or (ii) an online contract between the CoStar Client and CoStar that is formed by online registration and acceptance of these Terms of Use and that authorizes access to a CoStar service.

Only Authorized Users for a Passcode Protected Product may access such product and they may access it solely using the user name, password and, if applicable, key token (collectively, the "Passcodes") assigned to such user by CoStar. No Authorized User may share his Passcodes with any other person, nor may an Authorized User allow any other person to use or have access to his Passcodes. An Authorized User is defined as an individual (a) employed by a CoStar Client or an Independent Contractor (as defined below) of a CoStar Client at a site identified in the License Agreement, and (b) who is specified in the License Agreement as a user of a specific Passcode-Protected Product. An "Independent Contractor" is defined as an individual person working solely for the CoStar Client and not another company with real estate information needs and performing substantially the same services for such CoStar Client as an employee of such CoStar Client.

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From time to time, in CoStar's sole discretion, CoStar may offer a free trial period ("Free Trial") to certain individuals ("Free Trial Participant") chosen by CoStar to participate in the free trial. Unless terminated sooner by CoStar, the Free Trial shall last for the length of time specified in the email from CoStar that distributes Passcodes to the Free Trial Participant. The terms set forth in that email, combined with these Terms of Use, shall constitute a License Agreement between CoStar and the Free Trial Participant relating to such individual's access to and use of the associated Passcode Protected Product being offered through the Free Trial. During the Free Trial the Free Trial Participant shall be considered an Authorized User and a CoStar Client (as defined in these Terms of Use) and may use the Passcode Protected Product during the Free Trial subject to and solely in accordance with the terms outlined in such License Agreement relating to the Free Trial (which includes these Terms of Use).

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Subject to the provisions in these Terms of Use, you may use the Non-Passcode Protected Product (or, if you are an Authorized User, subject to the provisions in your License Agreement and these Terms of Use, you may use the applicable Passcode-Protected Product), in the ordinary course of your business for:

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- (2) Providing information regarding particular properties and market trends to your clients and prospective clients;
- (3) Marketing properties;
- (4) Supporting your valuation, appraisal or counseling regarding a specific property; and
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- (4) Modify, merge, decompile, disassemble, translate, decode or reverse engineer any portion of the Product, or use any data mining, gathering or extraction tool, or any robot, spider or other automatic device or manual process, to monitor or copy any portion of the Product;
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 contained in or derived from Kansas public records;
 - contains software viruses or any other computer code, files or programs that are designed to or have the
 capability to interrupt, modify, damage, improperly access, disable, destroy or limit the functionality of the
 Product or servers or networks connected thereto or the activities of other users of the Product or of any
 computer software or hardware or telecommunications equipment; or
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- (10) Use any portion of the Product to encourage or engage in illegal activity, stalk or harass another person, or violate these Terms of Use or any applicable local, state, national or international law, rule, regulation or crdinance, including without limitation, state and local real estate practice, spam or privacy laws.

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WE RESERVE THE RIGHT, AT ANY TIME AND FROM TIME TO TIME, TO PROSPECTIVELY CHANGE THE NATURE AND AMOUNT OF FEES CHARGED FOR ACCESS TO THE PRODUCT OR ANY OF THE

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We generally use or disclose the information we collect through the Product to conduct research on and to improve the Product, to perform customer service and support, to fulfill your requests for services, and to provide you with information regarding our services, including service-related announcements.

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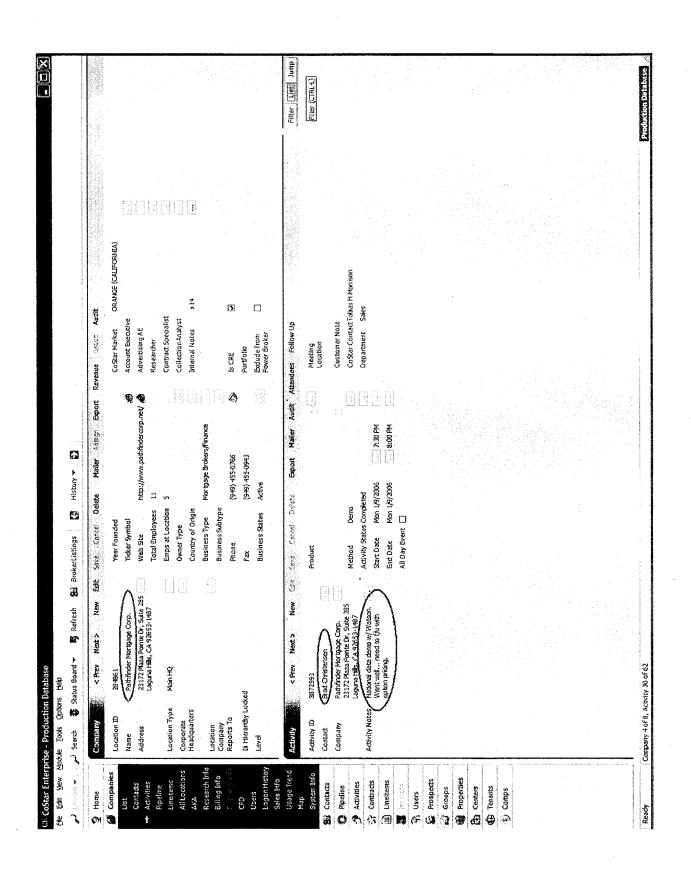
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Updated: March 16, 2009

Exhibit B

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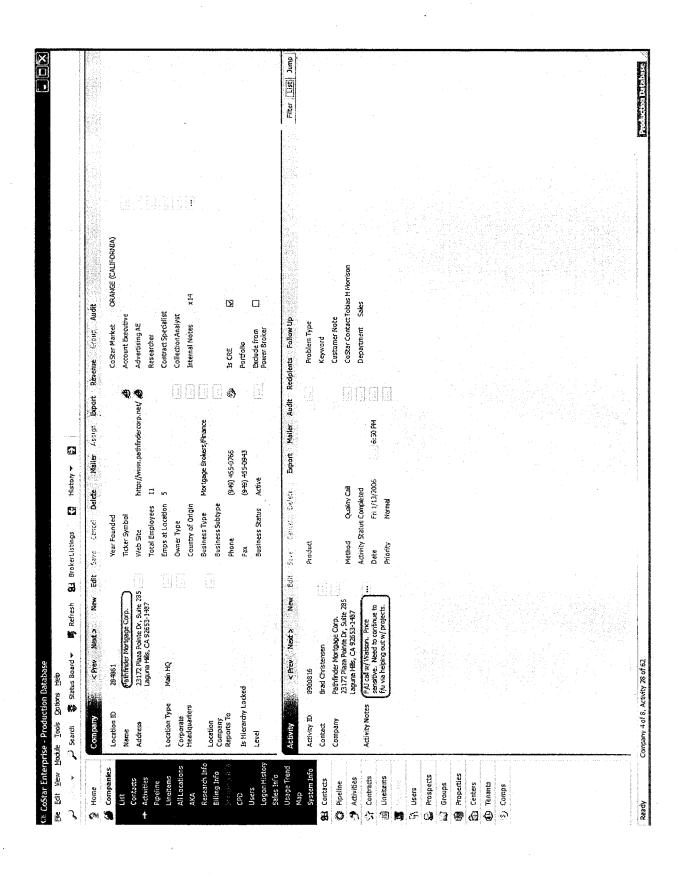
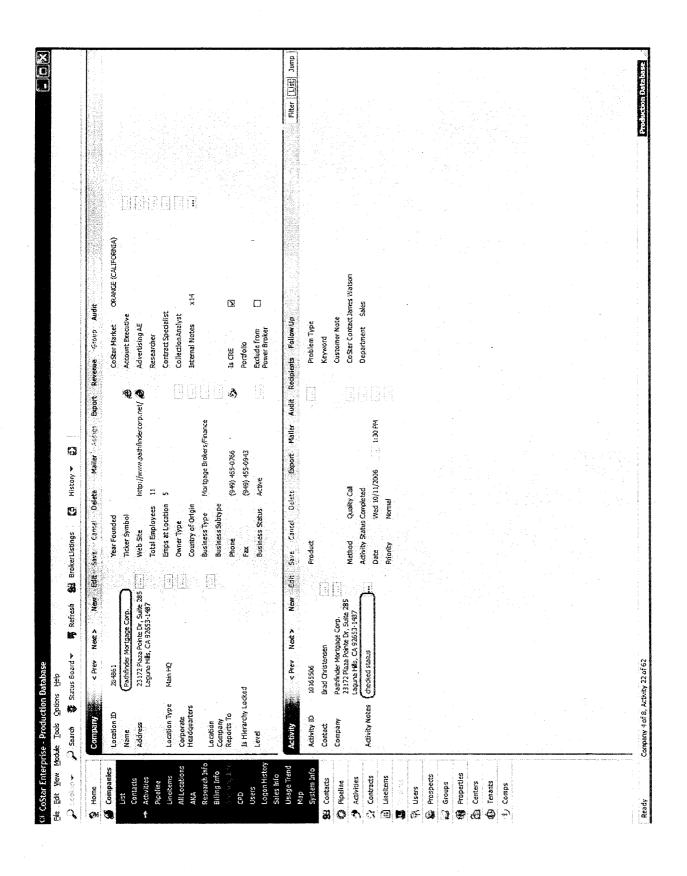
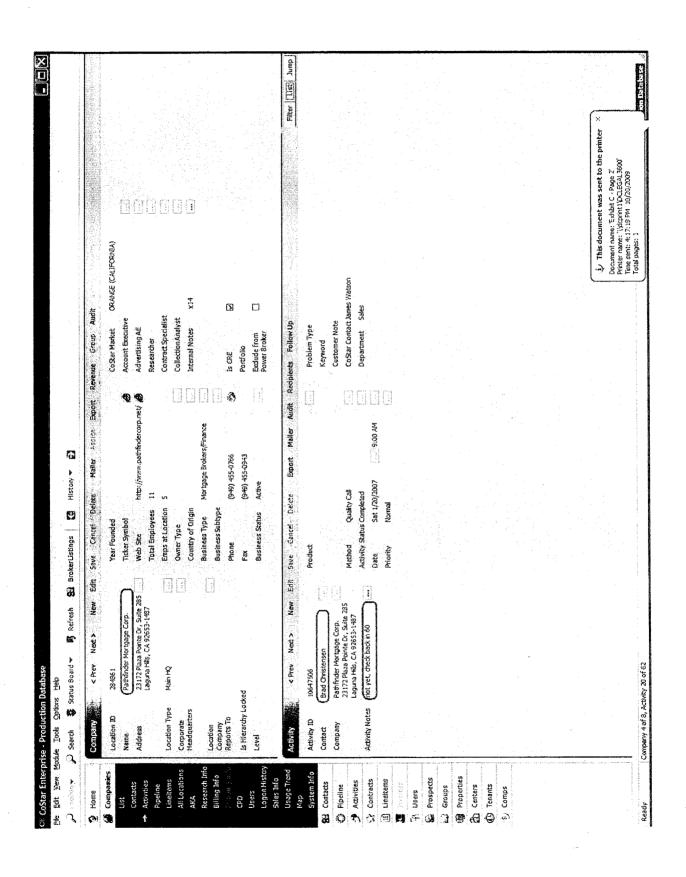


Exhibit C

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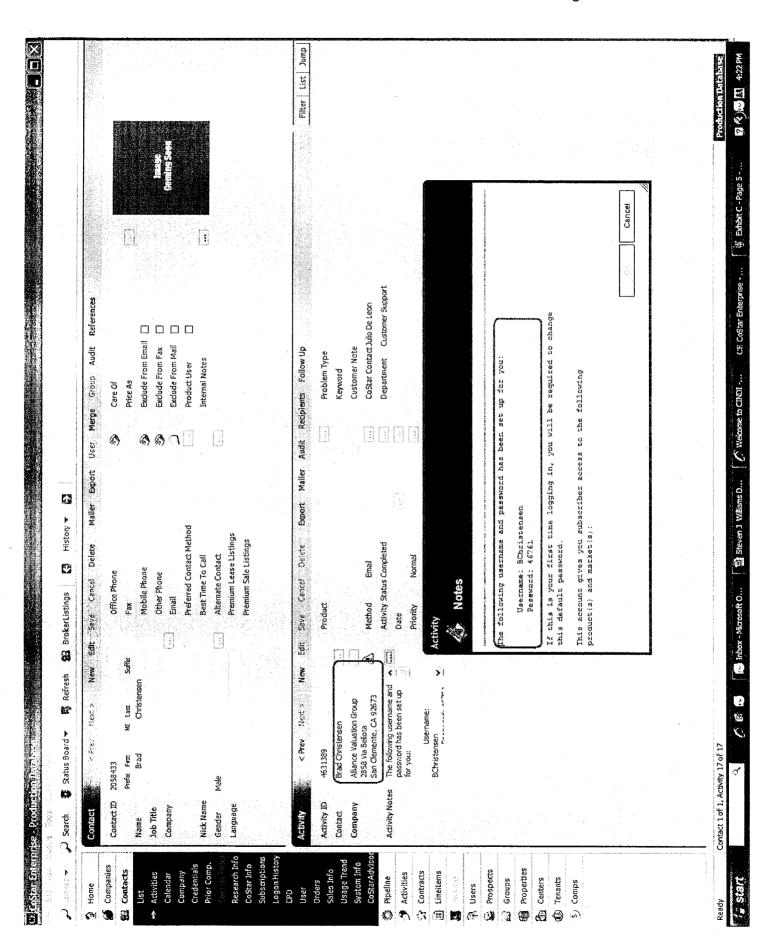




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EmailAddress	damaro@adelohia.net	nikkibertoni@cox.net	brad.christensen@cox.net	Imfield@cox.net	kirstenf@[vcos.com	markgautreau@cox.net	markgaufreau@cox.net	ajack5150@aol.com	chek72@aol.com	markdaulfreau@cox.net	marianoln@acl.com	bquannle@yattoo.com	sly2@cox.net
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FirstName LastName JobTille PhoneNumber	Appraiser (949) 955-1919	(948) 955-1919		(949) 955-1919	Assistant (949) 955-1919	Gautreau Principal/S (949) 955-1919	(949) 955-1919	(849) 955-1918	(949) 855-1919	(948) 361-3855	Appraiser (949) 955-1919	(948) 955-1919	(949) 955-1919
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LastName	Amaro	Bertoni	Christensen	Field	Fournier	Gautrerau	Gressett		Kirdzik		Peak	Quannie	Sky
FirstName	Douglas		Brad	Mark	Kirsten	Mark	Russ	Kathy	Cheryl	Debra		Barbara.	Kathy

Exhibit E

